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Further to my recent report on the latest developments in the search for peace in Bosnia and Herzegovina (S/1994/64), I have the honour to convey the attached report addressed to me on 24 January 1994 by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia on the activities of the working groups and other organs of the Conference.

Boutros BOUTROS-GHALI

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Annex

Report of the Co-Chairmen of the Steering Committee on the activities of the working groups and other organs of the Conference

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INTRODUCTION

1. The present report provides information on the activities of the working groups and other organs of the Conference.

I. WORKING GROUP ON BOSNIA AND HERZEGOVINA

2. The activities undertaken on the situation in Bosnia and Herzegovina were dealt with in Security Council reports S/26922 and S/1994/64.

II. PEACEMAKING ACTIVITIES WITH REGARD TO THE SITUATION IN THE UNITED NATIONS PROTECTED AREAS AND RELATED AREAS IN CROATIA

3. The peacemaking efforts undertaken under the auspices of the International Conference in respect of the situation in the United Nations protected areas and related areas in Croatia have been dealt with in separate reports submitted to the Council, the last of which was issued on 1 December 1993 (S/26828).

III. WORKING GROUP ON HUMANITARIAN ISSUES

4. Through the Working Group on Humanitarian Issues, chaired by Mrs. S. Ogata, United Nations High Commissioner for Refugees, the humanitarian situation in the former Yugoslavia has been kept under constant review. In general, the situation has continued to deteriorate.

5. Recurring hostilities in and around the United Nations protected areas in Croatia and human rights abuses against the few remaining members of minority groups there caused new displacement in the second half of 1993. Additional large numbers of civilians have also been uprooted in Bosnia and Herzegovina as a result of military offensives, especially in central Bosnia, or as a result of persecution or a mixture of both, while hundreds of thousands of others continue to be trapped in besieged areas or cities, often under desperate conditions. As the political crisis in the former Yugoslavia continues, the refugee burden weighs heavily on all countries of the region, but particularly on Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro). In the latter, which is under sanctions imposed by the Security Council, there are grave humanitarian concerns about the dire plight of the vulnerable groups, whose numbers are rising.

6. The international relief effort has continued to try to address foremost the emergency needs of refugees, internally displaced persons and other victims of conflict, in cooperation with the authorities of the countries concerned. The Working Group on Humanitarian Irsues reviewed the implementation of the international humanitarian assistance programme during a meeting held in Geneva on 16 July 1993, which, as was the case with previous meetings, was attended by all countries of the region, the international donor community and other interested States, the Department of Humanitarian Affairs of the United Nations

Secretariat and international governmental and non-governmental organizations participating in the relief effort. At a similar meeting held on 8 October 1993, a new consolidated appeal was launched, revising needs for the period October to December 1993 and putting forward the requirements for the first half of 1994, totalling $697 million. Several States announced new contributions, which were essential as the international relief effort was threatened by insufficient funding.

7. In Bosnia and Herzegovina the humanitarian operations of international organizations have been seriously obstructed, as reported on previous occasions to the Security Council. Humanitarian access to populations in need of assistance has been repeatedly denied or sabotaged for political or military purposes, especially by the Bosnian Serb and Bosnian Croat sides, while all sides have frequently and seriously threatened the security of the personnel of the United Nations Protection Force (UNPROFOR), the Office of the United Nations High Commissioner for Refugees (UNHCR) and other organizations. The international airlift to Sarajevo had to be interrupted several times for security reasons. Convoy operations were suspended in central Bosnia on 25 October 1993 after the killing of a UNHCR driver and the wounding of nine UNPROFOR soldiers.

8. In view of the deteriorating situation on the ground, and the prospect of still greater humanitarian disaster during the winter, Mrs. Ogata met with the political and military leadership of the Bosnian parties, on 18 November 1993 in Geneva. Mr. Sommaruga, President of the International Committee of the Red Cross (ICRC) participated in the Humanitarian Issues Working Group meeting in an observer capacity. Mrs. Ogata insisted with the leaders of the parties that the primary responsibility for averting further agony, especially in view of the winter period, was theirs. The Bosnian Serb side refused to cooperate in the opening of Tuzla airport for humanitarian flights. However, in a joint declaration the parties did agree to suspend fighting along the major supply routes for the passing of humanitarian convoys, in order to ensure complete and secure freedom of movement for the United Nations and international humanitarian organizations, to prevent diversion of humanitarian assistance to the military and to release all civilian detainees in accordance with the principles of and arrangements by ICRC. Especially important was the commitment of the parties, reached after much debate, to allow UNHCR and ICRC to determine the content of humanitarian assistance, including priority winterization needs and all materials, supplies, gas and other fuel necessary for the survival of the civilian population. Following this meeting, convoy operations were resumed in central Bosnia.

9. On 19 November 1993, the outcome of the previous day's meeting and the state of preparations for the relief effort during the winter period were reviewed during a Working Group session held in Geneva with the donor community and other interested States, UNHCR, the World Food Programme (WFP), the United Nations Children's Fund (UNICEF), the World Health Organization (WHO), the Intergovernmental Organization for Migration (IOM) and ICRC. On 29 November, Mrs. Ogata addressed a meeting convened by the European Union in Geneva, and attended by the Bosnian parties, at the end of which a declaration was signed by the military leaders of those parties, reiterating the commitments of 18 November 1993.

10. After the November meetings there was some improvement in obtaining clearances for the passage of both fuel and shelter materials to some areas. However, serious problems of access have persisted. In December 1993, the UNHCR convoy operation achieved 45 per cent (20,000 tons) of its overall target for food and non-food items. Bureaucratic obstruction and security incidents have increased further. Of the gravest concern is what seems to have become a pattern of deliberate targeting of humanitarian personnel by all parties. While the international relief effort is undoubtedly helping large numbers of victims to survive through the winter, intensified fighting and offensive action, especially in central Bosnia, are expected to increase further security risks and the obstruction of access to the victims.

IV. WORKING GROUP ON ETHNIC AND NATIONAL COMMUNITIES AND MINORITIES

Former Yugoslav Republic of Macedonia

11. On 27 August, Ambassador G. Ahrens, mediated "Agreed Minutes" (see appendix I) between the Government of the former Yugoslav Republic of Macedonia and representatives of the local Serbs, which addressed various issues brought up by Serbs in the former Yugoslav Republic of Macedonia. The Co-Chairmen raised these and other issues when they met President Gligorov in Skopje on 17 September, when they also visited the UNPROFOR contingent stationed there.

12. Regarding Albanians in the former Yugoslav Republic of Macedonia, a stocktaking exercise was undertaken by the International Conference on Former Yugoslavia in order to have a clear account of all the issues in which progress has been made and those which were still pending. Meetings in Skopje (24-27 August, 29 September-1 October, 11 November, 14-17 December, 6-7 January) concentrated mainly on improvements to the Law on Local Self-Government; the conditions for the use of the Albanian language in local and central state institutions; the training of Albanian teachers at university level; and the national census to be held in April 1994. Some of these issues are interlinked and of considerable scope, as for instance the Law on Local Self-Government, which requires a two-thirds majority for approval in Parliament. Although discussions were held in a constructive manner, the broad consensus necessary for a breakthrough in these areas has not yet materialized.

Kosovo

13. The Co-Chairmen raised the situation of Albanians in Kosovo several times during meetings with President Milosevic, and in particular urged the Yugoslav authorities to reconsider their decision not to prolong the mandate of the Conference on Security and Cooperation in Europe (CSCE) mission in Kosovo.

14. On 26 August, Ambassador Masset, Lord Owen's Deputy, travelled to Pristina to meet with the local Serbian authorities and with representatives of the Albanians. There were also contacts on Kosovo with the Serbian authorities in Belgrade.

15. The International Conference on Former Yugoslavia made a further attempt to reconvene talks on educational problems in Kosovo and invited both parties to Geneva on 8 September. The Belgrade Government did not attend, claiming that minority issues were internal matters. Since then, it has not been possible to find a mutually agreeable venue for the parties to meet.

Sanjak

16. On 20 January, the Co-Chairmen met representatives of the Muslim community in the Sanjak led by Mr. Ugljanin, President of the Muslim National Council of the Sanjak, to discuss the problems of the Muslim community. This followed up on the visit of Ambassador Masset to the Sanjak in October 1993.

Vojvodina

17. Ambassador Masset visited the Vojvodina in July 1993, where he met with leaders of the Croat and Hungarian communities, as well as the Serbian authorities, to discuss the problems of minorities in the area. Ambassador Masset also raised these problems with the federal and republican authorities in Belgrade.

V. WORKING GROUP ON SUCCESSION ISSUES

18. Two sessions of the Working Group on Succession Issues took place in Geneva, on 10 to 12 May and on 27 to 29 September 1993. A number of advisory opinions have also been given by the Arbitration Commission relating to several State succession issues. At the September meeting, Ambassador Jorgen Bojer was succeeded by Ambassador Alf Jonnson as Chairman of the Working Group. Depending on the outcome of bilateral consultations the Chairman is carrying out with the parties, the next Working Group session is expected to take place in late February 1994.

19. The meetings were well attended, with 25 to 30 experts participating. Both the May and the September meetings focused on succession in respect of archives and legal questions concerning the definition of the objects of succession.

20. As regards archives, the Working Group discussed in depth, at both meetings, the principles regulating the definition of archives and choice of legal rules applicable. Although the parties reserve their positions as regards these questions, a parallel process relating to the preservation and utilization of archives has started. A technical meeting jointly sponsored by the Commission of the European Community and the Austrian State Archives took place in Vienna from 13 to 17 November 1993, on security microfilming and preservation of archives concerning the succession of the former Yugoslavia. The meeting met with some success, with delegations from all five former Yugoslav States attending.

21. A common archives action plan, covering microfilming, protection and preservation of endangered archives in the former Yugoslavia, especially in Bosnia and Herzegovina, was agreed upon. The right of free access to all

federal and republican archives was again explicitly recognized. In the course of the meeting each of the five delegations:

(a) Set out its priorities as to which archives should be microfilmed and protected;

(b) Expressed its readiness to exchange microfilms, particularly in the interests of State succession;

(c) Indicated its requirements regarding basic equipment (cameras, etc.), materials (microfilms, chemicals, etc.), technical assistance (management and control) and staff training.

There was general agreement on the need to set up five security microfilming units, working to European and international standards, one in each of the five States, as an indispensable first step to ensure the action plan's implementation. The initial outlay to establish the five units will probably be in the order of 3 to 5 million European currency units, with which the international community will be asked to assist. Operating expenses would then be assumed by the different republics.

22. As regards the definition of State property, an inventory of assets to be divided was drafted by four of the five delegations, with one delegation, "the Federal Republic of Yugoslavia", not being present at that particular meeting. There were divergent views as to whether it was necessary to have a jointly accepted definition of State property first on whether an inventory could be started immediately. The September meeting of the Working Group did not achieve a consensus on this issue.

23. The Chairman decided that, before a new full meeting of the Working Group could be called, bilateral consultations would be necessary. The members of the delegation arguing the necessity of a jointly agreed definition agreed in bilateral consultations with the Chairman to the following:

(a) They would retain their position on the necessity for a definition;

(b) Nevertheless, they would, using their proposed definition as a working hypothesis, draw up an itemized list additional to the inventory already being worked out by the other parties.

24. With a view to allowing all the parties to see the maximum content of an inventory in order to prepare the ground for further negotiations, it was agreed that no new initiatives should be launched in the Working Group until the new list additional to the inventory had emerged. This should happen some time in early or mid-February, after which a full round of negotiations may be foreseen for the end of February 1994.

25. It has also been agreed by the parties in the Working Group that one should, to the extent possible, avoid the difficult questions relating to succession terminology, such as succession/secession/continuation, by using neutral language, i.e., the names of the States involved.

VI. WORKING GROUP ON ECONOMIC ISSUES

26. The Working Group on Economic Issues is chaired by Mr. J. Durieux. The Group last met on 17 February and on 23 March 1993 to consider a proposal for a high-level conference on the economic future of the countries of former Yugoslavia. Successive drafts of a document concerning the purpose and objectives of such a conference, exploring the different angles of a comprehensive reconstruction process, had previously been submitted to the Group and discussed by it. It was agreed, however, that the project could go forward only after there had been some advance in the peacemaking process.

27. At the 23 March session, the Chairman's report on an inventory for State succession, which had been submitted to the Co-Chairmen the previous month, was again discussed.

28. When the Working Group next reconvenes, foremost on its agenda will be the reconstruction and development issue. Planning for reconstruction is already under way in various forums. The Group will be considering some organizations aspects of a reconstruction process.

VII. WORKING GROUP ON CONFIDENCE- AND SECURITY-BUILDING AND VERIFICATION MEASURES

29. In January 1993, Ambassador Berasategui, the then Chairman of this Working Group, after consultation with the Co-Chairmen, deferred further work pending the outcome of the negotiations on Bosnia and Herzegovina. Following the agreement of the Bosnian parties on 19 January 1994 to implement confidence-building measures, Brigadier-General Pellnäs will travel to Split on 24 January for initial discussions with the Parties and, in the light of his report, the Co-Chairmen will decide on the future activities of the Group.

VIII. ARBITRATION COMMISSION

30. Advisory opinions Nos. 11 to 13, issued by the Arbitration Commission on succession issues, were reproduced in document S/26233, appendix VI. Opinions Nos. 14 and 15, issued on 13 August 1993, also on succession issues, are reproduced in appendices II and III below.

Appendix I

AGREED MINUTES

The Macedonian Minister of the Interior, Mr. Ljubomir Frckovski, met in Skopje on 27 August 1993 with a representative of Serbs in Macedonia, Mr. Boro Ristic. The meeting was chaired by Ambassaador G. Ahrens of the International Conference on the Former Yugoslavia, who was accompanied by Mr. A. Ritz and Mr. S. Coutinho. A representative of the CSCE Mission in Skopje, Mr. J. Gerasimov, was also present. The meeting recorded the following undertakings and understandings.

1. The government representative declared that the Serbian nationality will be treated completely equally with other nationalities living in Macedonia. The Government and the representative of the Serbs from Macedonia agreed to support consistent implementation in Macedonia of all rights formulated and made effective by the Charter of the United Nations and by the Conventions formulated under its auspices, as well as CSCE's, the Hague Declaration, the Charter of Paris and other instruments, especially the document of the Copenhagen Meeting on the Human Dimension.

2. The Serb representative declared that the Serbs in Macedonia would fulfil their aspirations only within the framework of the existing Republic of Macedonia.

3. The government representative declared that the Government is, in principle, prepared to satisfy the request of the Serbs to be mentioned in the preamble and in article 78 of the Macedonian Constitution and that in the meantime the Government would interpret the Macedonian Constitution as if the Serbs had been mentioned in the preamble and in article 78. Consequently, their constitutional status will be equal in every respect to that of the other nationalities listed in the Constitution. The Serb representative insisted that the Government, within 18 months, start and finish the process in Parliament which will make the constitutional position of the Serbs equal to that of all other nationalities already quoted in the Constitution and that, in case the Parliament or the Government do not accept the request of the Serbs, the Serbs in Macedonia will consider all dispositions of the present document as void.

4. The government representative declared that, according to the Law on Pre-school and Elementary Education, Serbian language instruction will be provided in each elementary school in which parents of at least 15 children make a request to that effect. For secondary schools, which according to the law are not obligatory, the Government declared that Serbian language instruction will be provided if at least 25 pupils make a request to that effect. The CSCE representative declared the readiness of his organization to monitor the expressions of choice by the parents, if so requested by either the Government or the parents, so that undue pressures be avoided. The Serb representative requested that the announcements for the admission of pupils to secondary schools (gymnasiums) specifically mention that instruction would be in the Serbian language in the following classes:

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(a) Two classes in Skopje;

(b) Two classes in Kumanovo;

(c) One class or some other secondary school in Negotino or Kavadarci.

The Government is obliged to provide textbooks and other auxiliary teaching tools to the classes conducted in Serbian.

5. The government representative declared that the Government will guarantee to the Serbs in Macedonia constitutional religious freedom, including the freedom of choice of church.

6. The government representative declared that Serbian language media will be supported in the same way as the media of other nationalities.

7. The government representative announced that in April 1994 a national census would be conducted in Macedonia, monitored by a panel of international experts headed by the Chairman of the European Population Committee of the Council of Europe. The Serb representative took note of this with satisfaction and promised full cooperation.

8. The government representative declared that the Government will take measures to protect historical monuments as well as the cultural inheritance of the Serbs in Macedonia and will help and support cultural organizations and institutions of the Serbs in Macedonia on an equal basis with the other nationalities.

9. The government representative announced that, to facilitate the implementation of the undertaking in paragraph 1 of these Minutes, the Government will promptly submit a request to the Council of Europe for assistance in the earliest possible implementation of the human rights protection mechanism for non-member States provided for in resolution 93 (6) of the Committee of Ministers of the Council. This mechanism is to bridge the period until Macedonia becomes a full member of the Council of Europe.

The International Conference on the Former Yugoslavia delegation stated that it considered these undertakings and understandings as reflecting the requests and complaints put before the International Conference on the Former Yugoslavia by the Serbs from Macedonia. The International Conference on the Former Yugoslavia was prepared to discuss any problems arising in the course of

implementing these undertakings and understandings, should either party so request.

For the Government:

(Signed) Ljubomir FRCKOVSKI

For the Serbs:

(Signed) Boro RISTIC

Witnessed by:

(Signed) Geert AHRENS
(International Conference on the Former Yugoslavia)

(Signed) Jakov GERASIMOV
(Conference on Security and Cooperation in Europe)

Appendix II

ARBITRATION COMMISSION

Opinion No. 14

On 20 April 1993, the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia referred six questions to the Chairman of the Arbitration Commission, seeking the Commission's opinion.

Question 1 was:

"In the light of the inventory in the report by the Chairman of the Working Group on Economic Issues, what assets and liabilities should be divided between the successor States to the former Socialist Federal Republic of Yugoslavia in connection with the succession process?"

On 12 May 1993, the Co-chairmen of the Steering Committee of the International Conference transmitted to the Chairman of the Commission a declaration by the Government of the Federal Republic of Yugoslavia raising a number of objections to the reference to the Commission. The members of the Commission unanimously adopted a document reacting to the assertions made by the Federal Republic of Yugoslavia. This was addressed to the Co-Chairmen of the Steering Committee of the International Conference on 26 May 1993. None of the States parties to the proceedings has contested the Commission's right to answer questions referred to it.

The Commission has taken cognizance of the memorandum, observations and other materials communicated by Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and Slovenia, which have been passed on to all the successor States to the Socialist Federal Republic of Yugoslavia. The Federal Republic of Yugoslavia has submitted no memorandum or observations on the questions referred.

1. The Arbitration Commission notes that the Draft Single Inventory of the Assets and Liabilities of the Socialist Federal Republic of Yugoslavia as at 31 December 1990 drawn up by the Working Group of the International Conference on the Former Yugoslavia on 26 February 1993 divides the assets and liabilities into two categories: agreed items and non-agreed items.

As the Commission recalled in opinion No. 9, the first principle applicable to State succession is that the successor States should consult with each other and agree on a settlement of all questions relating to the succession.

Assets and liabilities listed in the Inventory of 26 February 1993 upon which the successor States have reached agreement should accordingly be divided between them.

2. As regards non-agreed items, the Arbitration Commission considers that it does not have sufficient information on which to base a decision as to each asset and liability listed in the Inventory. Moreover, it considers that these

are not legal issues which it could profitably seek to resolve as part of its consultative remit and that it should confine itself to determining the general principles to be applied.

3. The Commission would nevertheless draw attention to the well-established rule of State succession law that immovable property situated on the territory of a successor State passes exclusively to that State. Subject to possible compensation if such property is divided very unequally between the successor States to the Socialist Federal Republic of Yugoslavia the principle of the locus in quo implies that there is no need to determine the previous owner of the property: public property passes to the successor State on whose territory it is situated. The origin or initial financing of the property and any loans or contributions made in respect of it have no bearing on the matter.

4. As regards other State property, debts and archives, a commonly agreed principle to be found in several provisions of the Vienna Convention of 8 April 1983 on the Succession of States in respect of State Property, Archives and Debts requires that they be divided among the successor States to the Socialist Federal Republic of Yugoslavia if, at the date of succession, they belonged to the Socialist Federal Republic of Yugoslavia, and the question of the origin and initial financing of the property, debts and archives, or of any loans or contributions made in respect of them, is irrelevant.

5. To determine whether the property, debts and archives belonged to the Socialist Federal Republic of Yugoslavia, reference should be had to the domestic law of the Socialist Federal Republic of Yugoslavia in operation at the date of succession, notably to the 1974 Constitution.

There are, however, two particular problems arising from the federal structure of the Yugoslav State and from the concept of "social ownership", a concept which, while it does exist in other countries, was particularly highly developed in the Socialist Federal Republic of Yugoslavia.

6. On the first point, there is no doubt that the 1974 Constitution transferred to the constituent republics ownership of many items of property, which in consequence cannot be held to have belonged to the Socialist Federal Republic of Yugoslavia whatever their origin or initial financing.

7. As for "social ownership" it was held for the most part by "associated labour organizations", bodies with their own legal personality, operating in a single republic and coming within its exclusive jurisdiction. Their property, debts and archives are not to be divided for purposes of State succession: each successor State exercises its sovereign powers in respect of them.

If and to the extent that other organizations operated "social ownership" either at federal level or in two or more republics, their property, debts and archives should be divided among the successor States in question if they exercised public prerogatives on behalf of the Socialist Federal Republic of Yugoslavia or of individual republics. On the other hand, organizations operating at federal level or in two or more republics but not exercising such prerogatives should be considered private-sector enterprises to which State succession does not apply.

8. The answer to the question referred is without prejudice to whatever compensation might be necessary to achieve an equitable overall outcome.

9. Should the application of these principles or the determination of the ownership of an item of property at the date of State succession give rise to problems, it would be for the States concerned to resort to arbitration or some other mode of peaceful settlement of their disputes, but it does not behove the Arbitration Commission in the exercise of its consultative function to detail what rules would apply to a particular contentious issue between States emerging from the dissolution of the Socialist Federal Republic of Yugoslavia.

10. The Arbitration Commission consequently takes the view that the assets and liabilities to be divided between the successor States to the Socialist Federal Republic of Yugoslavia for purposes of State succession are (a) those which the successor States are agreed in regarding as being such and (b) the State property, debts and archives, which at the date of State succession belonged to the Socialist Federal Republic of Yugoslavia in accordance with the law in operation there, excluding property belonging to individual republics or to "associated labour organizations" depending on them.

Paris, 13 August 1993

Appendix III

ARBITRATION COMMISSION

Opinion No. 15

On 20 April 1993 the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia referred six questions to the Chairman of the Arbitration Commission, seeking the Commission's opinion.

Question 5 was:

"(a) In view of the dissolution of the Socialist Federal Republic of Yugoslavia, is the National Bank of Yugoslavia entitled to take decisions affecting property, rights and interests that should be divided among the successor States to the Socialist Federal Republic of Yugoslavia in connection with State succession?

"(b) Have the central banks of the States emerging from the dissolution of the Socialist Federal Republic of Yugoslavia succeeded to the rights and obligations of the National Bank of Yugoslavia deriving from international agreements concluded by the latter, in particular the 1988 financial agreement with foreign commercial banks?"

On 12 May 1993 the Co-Chairmen of the Steering Committee of the International Conference transmitted to the Chairman of the Commission a declaration by the Government of the Federal Republic of Yugoslavia raising a number of objections to the reference to the Commission. The members of the Commission unanimously adopted a document reacting to the assertions made by the Federal Republic of Yugoslavia. This was addressed to the Co-Chairmen of the Steering Committee of the Conference on 26 May 1993. None of the States parties to the proceedings has contested the Commission's right to answer questions referred to it.

The Commission has taken cognizance of the memorandum, observations and other materials communicated by Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and Slovenia, which have been passed on to all the successor States to the Socialist Federal Republic of Yugoslavia. The Federal Republic of Yugoslavia ha submitted no memorandum or observations on the questions referred.

While they are linked, questions 5 (a) and 5 (b) are distinct enough to be answered separately.

A. Question 5 (a)

1. Although municipal laws are merely facts in international law (Certain German Interests in Polish Upper Silesia, 1926 PCIJ, Ser. A, No. 7, 12), account must nevertheless be taken of the structure and responsibilities of the National Bank of Yugoslavia as set out in the Socialist Federal Republic of Yugoslavia

Constitution of 21 February 1974 and in the National Bank of Yugoslavia statute of November 1989.

As the bank of issue of the Socialist Federal Republic of Yugoslavia, the National Bank of Yugoslavia participated in the exercise of the prerogatives of sovereignty. Moreover, as a composite of banking institutions - central, republican and provincial - it was responsible for carrying out common currency issue, credit and foreign exchange policy, and it had close institutional relations with Parliament.

The National Bank of Yugoslavia, then, partook of the State power of the Socialist Federal Republic of Yugoslavia, whose dissolution led simultaneously to the disintegration of the collective structure of the National Bank of Yugoslavia.

2. None of the organs of the National Bank of Yugoslavia, therefore, can take legitimate decisions in respect of property, rights and interests that should be divided among the successor States to the Socialist Federal Republic of Yugoslavia.

No decision in such matters taken by the Governor of the National Bank of Yugoslavia on his own authority would have any legal validity once the former collective organization has ceased to exist.

3. Only if, outside the pre-existing institutional framework, collaboration between the central banks of the States emerging from the dissolution of the Socialist Federal Republic of Yugoslavia had continued could the National Bank of Yugoslavia be considered to be a coordinating agency acting on their behalf for purposes of jurisdictio inter volentes to effect - rather than obstruct - the division of the property, rights and interests of the former Socialist Federal Republic of Yugoslavia.

4. As this is not the case, the Arbitration Commission takes the view that the National Bank of Yugoslavia is not entitled to take decisions affecting property, rights and interests to be divided between the successor States in accordance with the principles of State succession.

B. Question 5 (b)

5. Given the answer to question 5 (a), decisions taken by the National Bank of Yugoslavia as an organ of the Socialist Federal Republic of Yugoslavia committed that State. The rights and obligations deriving from those decisions consequently pass to the successor States and must be divided among them in accordance with the principles of international law rehearsed by the Commission in opinion No. 9. This does not apply to ordinary commitments entered into by the National Bank of Yugoslavia acting as a bank with its own legal personality.

6. This distinction is applicable to rights and obligations of the National Bank of Yugoslavia deriving from international agreements it has entered into. The answer to the first part of question 5 (b) therefore depends in each case

upon the nature of the agreement and upon the National Bank of Yugoslavia's commitments.

7. However, the Arbitration Commission would underline the fact that the rights and obligations of the National Bank of Yugoslavia, as an organ of the Socialist Federal Republic of Yugoslavia, which are therefore subject to State succession (see supra, para. 5), do not pass automatically to the central banks of the States emerging from the dissolution of the Socialist Federal Republic of Yugoslavia: it is for each of the successor States to determine, by virtue of its sovereign constitutional powers, how these rights are to be exercised and these obligations discharged - rights and obligations which they may assume either directly or through their central banks.

8. As regards the financial agreement of 20 September 1988 between the National Bank of Yugoslavia and Manufacturers Hanover Limited, acting for the international creditors, the Commission would point out that the National Bank of Yugoslavia acted together with other Yugoslav banking institutions presenting themselves expressly as legal persons accepting on their own behalf the obligations deriving from the agreement (notably sects. 1.01 and 10.01) and that the parties to the agreement made the discharge of their obligations subject to the law of a third State (sect. 14.12) and, in the event of a dispute, to the jurisdiction of various ordinary Yugoslav or foreign courts (sect. 14.08).

In the event of any dispute over the interpretation or application of the agreement, it is therefore for the parties to refer it to one of the courts that have jurisdiction under the agreement itself.

9. The Commission notes, however, that the successor States to the Socialist Federal Republic of Yugoslavia have succeeded it in so far as it had assumed the obligations of guarantor under the agreement of 20 September 1988.

Should the application of this principle give rise to problems, it would be for the States concerned to resort to arbitration or some other mode of peaceful settlement of their disputes.

10. The Arbitration Commission consequently takes the view:

(a) That problems arising from the rights and obligations of the National Bank of Yugoslavia deriving from international agreements concluded by it are to be resolved by reference to the terms of the agreements and, in case of dispute, are to be referred to the appropriate courts; and

(b) That this holds good in particular for rights and obligations deriving from the financial agreement of 1988 entered into by the National Bank of Yugoslavia and other Yugoslav banking institutions with foreign commercial banks.

Paris, 13 August 1993